U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M- INC

DATE: MAY 31, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an accounting and tax preparation company, seeks to continue the Beneficiary's employment as its chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees.[1] *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition concluding that the Petitioner did not establish that the Beneficiary would act in a managerial or executive capacity in the United States.

On appeal, the Petitioner acknowledges that the Beneficiary would perform non-qualifying tasks, but contends that the Director should have conducted a site visit to confirm he was employed in a managerial capacity. The Petitioner asserts that it is "neither practical or possible" to provide specific job descriptions for the Beneficiary's subordinates given its level of development.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period June 15, 2016, until June 12, 2017. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The first issue to be addressed is whether the Petitioner has established that the Beneficiary would act in a managerial capacity under the extended petition. The Petitioner does not claim that the Beneficiary would be employed in an executive capacity. Therefore, we will restrict our analysis to whether the Beneficiary would be employed in a managerial capacity.

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

When examining the managerial capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

Based on the definition of managerial capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner stated that it "specializes in providing accounting and tax preparation services, management accounting services and Quickbooks set-up, [and] training services for small and medium-size[d] business clients." The Petitioner indicated that from November 2016 to March 2017 the Beneficiary was tasked with "concluding selection, interviewing and [the] hiring process." The Petitioner explained that as of April 2017, or approximately two months prior to the petition, the Beneficiary devoted 65% of his time to overseeing two "managerial positions."

The Petitioner stated that as CEO, the Beneficiary was tasked with managing professional employees and managers to "make sure that start-up activities of the company go in order to grow business and revenues." The Petitioner indicated that the Beneficiary trains, supervises, directs, and coordinates his subordinate managers and professionals to "sustain financial activities and relationships with clients." Further, it explained that the Beneficiary was involved in "planning of business development, revenues and profits," developing and marketing "additional product and service offerings," and "attending meetings relevant to business consultancy and [the] accounting industry." It also stated that the Beneficiary tracks "changing industry trends," develops and changes the "company's policies and procedures," manages employment contracts, and drafts the "income and expenditure budget." In addition, the Petitioner indicated that the Beneficiary develops the "vision" and "long term and short term strategies and budgets" of the company, coordinates and executes "decisions of the parent company," and "analyzes operations to evaluate the performance of the company."

The Petitioner has not submitted a sufficiently detailed duty description that describes the Beneficiary's day-to-day managerial-level duties or credibly establishes that he would devote his time primarily to qualifying tasks. The Beneficiary's duty description includes several generic duties that could apply to any manager acting in any business or industry and they do not provide insight into the actual nature of his role. The Petitioner provided insufficient examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties, such as business development he coordinated, additional products and service offerings he introduced, accounting industry meetings he attended, or policies and procedures he developed or changed. The Petitioner also does not articulate or document employment contracts the Beneficiary negotiated, budgets he drafted, vision he set, long and short term strategies he put in place, or parent company decisions he executed. The Beneficiary's stated duties include few references to its specific business type and provide little detail as to his actual day-to-day tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In contrast, on appeal, the Petitioner appears to acknowledge that the Beneficiary devotes his time to specific non-qualifying operational tasks such as making phone calls to potential customers and writing checks to pay expenses. However, we are provided with few specific examples of his daily managerial duties, beyond the Petitioner vaguely stating that he oversees two "managerial" subordinates. For instance, the Petitioner states that the Beneficiary is "already in the process of making a detailed business plan for the upcoming financial year," yet details regarding this plan are

not provided and this statement leaves questions regarding the Beneficiary's duties under the extended petition as of the date the petition was filed.

Whether a beneficiary is a managerial employee turns on whether the petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* section 101(a)(44)(B) of the Act. Here, the Petitioner does not meaningfully document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Petitioner submits evidence indicating the Beneficiary's involvement in operational level tasks that do not fall directly under managerial duties as defined in the statute, but does not quantify the time he spends on these duties. It is not sufficient to simply state that the Beneficiary spends 65% of his time overseeing managerial subordinates without sufficiently detailing and substantiating this assertion with supporting documentation. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in an managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. *Id.* The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

In the Form I-129, the Petitioner indicated that it had four employees, including the Beneficiary as of the date the petition was filed. An organizational chart submitted in response to the Director's request for evidence (RFE) reflected that the Beneficiary supervised a secretary, an accounting manager, and a management accountant. Further, the accounting manager was shown to oversee another accountant.

In denying the petition, the Director stated that the Petitioner did not submit sufficient evidence to demonstrate that the Beneficiary would primarily oversee subordinate managers and professionals or that the company had adequate employees to relieve him from performing non-qualifying duties. On appeal, the Petitioner contends that the Director should have conducted a site visit to confirm whether the Beneficiary is employed in a managerial capacity. The Petitioner also asserts that it is "neither practical or possible" to provide specific job descriptions for the Beneficiary's subordinates given its level of development.

The Petitioner contends that the Beneficiary qualifies as a manager based on his supervision of subordinate managers and professionals. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*). In the current matter, the Petitioner does not assert that the Beneficiary qualifies as a function manager; as such, we will only analyze whether he qualifies as a personnel manager.

The submitted evidence does not demonstrate that the Beneficiary likely oversaw subordinate managers as of the date the petition was filed. As noted, the Petitioner provided an organizational chart in response to the RFE reflecting that it had four employees beyond the Beneficiary. However, the relevant organizational chart to analyze is that existing as of the date the petition was filed. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Contrary to the provided organizational chart, the evidence indicates that the Beneficiary only had two subordinates as of the date the petition was filed. For instance, the Petitioner submitted a California employer's quarterly tax return from the second quarter of 2017, corresponding with the date of the petition, reflecting that it paid wages to the Beneficiary, the accounting manager, the management accountant, and another employee identified on the record as a "quick book accountant." The Petitioner also provided payroll documentation indicating that the quick book accountant last received $132 in wages in April 2017. These wages correspond to the amount the quick book accountant was paid in state quarterly tax returns for the second quarter of 2017 and this employee does not appear in any tax or payroll documentation submitted after April 2017. As such, the evidence indicates that the Petitioner only employed the accounting manager and the management accountant as of the date the petition was filed.

Therefore, the evidence reflects that the Beneficiary did not supervise subordinate managers or supervisors as of the petition. For instance, the organizational chart showed that the Beneficiary supervised the accounting manager and the management accountant; however, tax and payroll documentation indicates that these employees had no subordinates as of the date the petition was filed. As such, the Petitioner has not demonstrated that the Beneficiary qualifies as a manager based on his supervision of subordinate managers.

The only remaining question is whether the Beneficiary primarily oversees professional subordinates. In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry

into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

First, the record does not demonstrate that the management accountant qualifies as a professional. The Petitioner indicates in the organizational chart that the management accountant is "pursuing [a] bachelor's" in business administration. As such, the evidence reflects that the management accountant does not hold the bachelor's degree required to qualify as a professional.

Further, the Petitioner does not provide a sufficient and credible duty description for the accounting manager to establish that he acts in a professional capacity. We acknowledge that the asserted accounting manager appears to have minimal educational credentials to qualify as a professional, namely a master of science degree in taxation. However, the accounting manager's duties largely overlap with those of the Beneficiary, including "recruiting, selecting, orienting, training, assigning, scheduling, coaching, counseling, and disciplining employees," reviewing job contributions of subordinates, enforcing policies and procedures, preparing actions plans, and preparing annual budgets. These duties appear questionable in light of the evidence indicating that the accounting manager had no subordinates as of the date the petition was filed. The accounting manager's duties are also generic and do not sufficiently detail his day-to-day tasks, such as employees he recruited or disciplined, policies and procedures he enforces, or action plans or annual budgets he prepared. In addition, the largely managerial duties of the accounting manager leave question as to who is actually performing the services of the business.

The submitted evidence also supports a conclusion that the Petitioner was not sufficiently operational to support the Beneficiary in a managerial capacity as of the date the petition was filed where he was primarily relieved from non-qualifying operational duties. As noted, the Petitioner had only two employees as of the date the petition was filed. The provided tax and payroll documentation also indicates that the management accountant works only part-time. For instance, although payroll documentation reflects that the management accountant worked 35 hours during the second half of June 2017, the payroll statements from May through September 2017 indicate that this employee only worked approximately 8 to 16 hours on a bi-weekly basis. The Petitioner provides a number of client invoices and a list of ten clients to which it provides accounting services as of the petition's filing. As such, it is not likely that the accounting manager and the part-time management accountant would be sufficient to relieve the Beneficiary from providing accounting services to clients. Further, this undermines the Petitioner's assertion that the accounting manager acts as a subordinate manager. It also seems unlikely, given this level of staffing, that the Beneficiary devotes 65% of his time, as asserted, to overseeing his one subordinate with a bachelor's degree.

The Petitioner also provides statements as to its development that further undermine its assertion that it was sufficiently developed to support the Beneficiary in a managerial capacity as of the date the

petition was filed. For instance, the Petitioner stated in support letters that "the Beneficiary needs more time, at least 3 years, to continue the process of [the] start-up of the [Petitioner's] business, hiring more manager[s] and employees, [and to] implement his CEO duties." This statement appears to directly acknowledge that the Petitioner is not sufficiently operational to support the Beneficiary's asserted managerial duties. Indeed, a submitted financial statement indicates that the Petitioner earned only $59,730 in revenue as of September 2017, approximately three months after the date the petition was filed, leaving question as to whether it had developed sufficiently by June 2017 to support the Beneficiary's asserted role. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the petition to support a managerial position. There is no provision in USCIS regulations allowing for an extension of this one-year period. If the business does not have the necessary staffing to relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible for an extension.

On appeal, the Petitioner contends that providing specific duty descriptions for every employee is "neither practical or possible." The Petitioner states that "it is still in [the] process of establishing itself in the area, [as such] a specified job responsibility cannot be assigned to each employee." Again, this statement indicates that the Petitioner has not developed sufficiently to define the duties of its subordinates leaving question as to whether the Beneficiary's role has been sufficiently defined. We disagree that it is not possible for a petitioner to articulate detailed duties for a beneficiary's subordinates. Beyond a beneficiary's duties, we commonly examine the company's organizational structure and the duties of a beneficiary's subordinate employees. Subordinate duties are very probative to substantiating a beneficiary's role and whether he or she is sufficiently relieved of non-qualifying tasks.

The Petitioner also contends that the Director should have conducted a site visit to substantiate the Beneficiary's asserted managerial role. Although applicable law establishes our right to verify eligibility for a claimed immigration benefit through a site visit, it does not establish a duty on our part to conduct site visits to confirm assertions in a record. *See* 8 U.S.C. §§ 1103, 1155, 1184 and 8 C.F.R. §§ 103, 204, 205, and 214. We note that it is the Petitioner's burden to demonstrate eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

In conclusion, the Petitioner has not sufficiently detailed or documented the Beneficiary's managerial duties, and to the extent it provides details regarding his duties, they are indicative of non-qualifying operational tasks. The Petitioner has also not demonstrated that it was sufficiently developed as of the date the petition was filed to support the Beneficiary in a managerial capacity. For these reasons, the appeal will be dismissed.

III. QUALIFYING RELATIONSHIP

Although not addressed by the Director, we find that the Petitioner did not submit evidence to establish that it and the Beneficiary's foreign employer are still qualifying organizations. *See* section 101(a)(15)(L); *see also* 8 C.F.R. 214.2(l)(1)(ii)(G) (providing definitions of the terms "parent,"

"branch," "subsidiary," and "affiliate") and 8 C.F.R. 214.2(l)(14)(ii)(A) (requiring evidence that petitioners and foreign entities are "still qualifying organizations").

The Petitioner stated in the Form I-129 that it is wholly owned by the Beneficiary's former foreign employer. However, the Petitioner submitted an IRS Form 1120 U.S. Corporation Income Tax Return stating in schedule G that it is wholly owned by the Beneficiary. The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner does not submit sufficient supporting evidence to clarify this discrepancy and document its ownership, including share certificates, stock ledgers, meeting minutes, its articles of incorporation, or other such documentation. *See Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986).

IV. CONCLUSION

The appeal must be dismissed as the Petitioner did not establish that the Beneficiary would be employed in a managerial capacity under the extended petition and that it has a qualifying relationship with the Beneficiary's foreign employer.

ORDER: The appeal is dismissed.

Cite as *Matter of M-M- Inc*, ID# 1268074 (AAO May 31, 2018)